

City of New Cumberland

Municipal Home Rule Pilot Program Phase III Application



Made Available to the Public:

Public Hearing: January 11, 2016

First Ordinance Reading: January 4, 2016

Second Ordinance Reading: January 11, 2016

Submitted to the WV Municipal Home Rule Board: April 4, 2016

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Municipal Home Rule Pilot Program Phase III

APPLICATION CHECKLIST

SECTION I: APPLICANT INFORMATION	
Page No.	
	General Information
	Municipal Classification
	Specific Issue(s) to be Addressed
	Issue(s) Category: Tax/Organization/Administrative/Personnel/Other

SECTION II: NARRATIVE	
Page No.	
	Specific state laws, policies, acts, resolutions, rules or regulations that are preventing the municipality to carry out duties in the most cost effective, efficient, and timely manner.
	Specific problem(s) created by the laws, policies, acts, resolutions, rules or regulations.
	Proposed solution(s) to the perceived problem(s), including all proposed changes to law, policies, acts, resolutions, rules or regulations. Categorize and include: <ol style="list-style-type: none"> 1) Proposed solution(s) in one of the five areas (tax/administrative/organization/ personnel/other) 2) If revenue related, estimate(s) for proposed solution(s) and how the fiscal impact was determined. Example: Estimated reduction of administrative time and costs = X. Please attach the worksheet or formula used to determine "X" amount.

SECTION III: AFFIDAVITS	
Page No.	
	Hearing Mandate Verification
	Publication Mandate Verification
	Ordinance Authorizing Submission of Plan
	Fiscal Impact Worksheets/Formulas (if revenue related)
	Attorney Opinion (application complies with statutory requirements)
	State of West Virginia Fees Statement (none outstanding)

Municipal Home Rule Pilot Program Phase III

APPLICATION

SECTION I: APPLICANT INFORMATION	
A. General Information	
Name of Municipality: New Cumberland	
Certifying Official: Linda L. McNeil	Title: Mayor
Contact Person: Tamera M. Jenkins	Title: City clerk
Address: PO Box 505	
City, State, Zip: New Cumberland, WV 26047	
Telephone Number: 304-564-3383 ext 200	Fax Number: 304-564-3777
E-Mail Address: cityclerk@cityofnewcumberland.net	
2010 Census Population: 1103	
B. Municipal Classification	
<input type="checkbox"/> Class 1 <input type="checkbox"/> Class II <input type="checkbox"/> Class III <input checked="" type="checkbox"/> Class IV	
C. Category of Issues to be Addressed (please attach descriptions for applicable categories)	
<input checked="" type="checkbox"/> Tax <input type="checkbox"/> Organization <input type="checkbox"/> Administration <input type="checkbox"/> Personnel <input type="checkbox"/> Other	
SECTION II: NARRATIVE (written plan, including the following)	
<p>Specific state laws, policies, acts, resolutions, rules or regulations that are preventing the municipality to carry out duties in the most cost effective, efficient, and timely manner.</p> <p>Specific problem(s) created by the laws, policies, acts, resolutions, rules or regulations.</p> <p>Proposed solution(s) to the perceived problem(s), including all proposed changes to law, policies, acts, resolutions, rules or regulations. Categorize and include:</p> <p>3) Proposed solution(s) in one of the five areas (tax/administrative/organization/personnel/other)</p> <p>4) If revenue related, estimate(s) for proposed solution(s) and how the fiscal impact was determined. Example: Estimated reduction of administrative time and costs = X. Please attach the worksheet or formula used to determine "X" amount.</p>	
SECTION III: AFFIDAVITS	
Hearing Mandate Verification Publication Mandate Verification Ordinance Authorizing Submission of Plan Fiscal Impact Worksheets/Formulas (if revenue related) Feasibility Study (if taxes are proposed) Attorney Opinion (application complies with statutory requirements) State of West Virginia Fees Statement (none outstanding)	

Executive Summary

New Cumberland is a pleasant, close knit residential community of about 1103 people, established in 1839. Located on the beautiful Ohio River in the northern panhandle of West Virginia, our motto is "Good People Make a Good Town".

We are incorporated with our own police department, ambulance service, volunteer fire department, and water and sewer plants. Our city government consists of an elected mayor and six council members. The City of New Cumberland is a Class IV Municipality located in Hancock County, of which New Cumberland is the County seat. We are centrally located in between the City of Weirton and the City of Chester.

As you look at the river valley and hills we call home, it is easy to imagine the days long ago when Indians enjoyed the forests and abundant wildlife of our town. George Washington wrote about the Ohio River and Hancock County area in his journal of 1770, commenting on the wildlife around the river and noting the abundance of wild geese, ducks, fish and wild turkeys.

Industrialization of New Cumberland began in 1830 when the first clay mines opened. All the clay was dug entirely by hand, then sent to Pittsburgh for use in the manufacture of bricks. Seeing the advantages of having a plant near the raw material, the first brick company opened in 1832, followed by a second in 1834 and a third in 1837. In 1839, land owner John Cuppy decided to sell forty-two lots of his land for a town. The first home was built in the spring of 1840 and the town emerged from this one home. Cuppy named the village Vernon although it was first known as Cuppy Town. Later several families who had settled on his land decided New Cumberland would be a more satisfactory name.

By 1844, New Cumberland was a bustling industrial and river town with five brick factories producing an annual yield of 1,500,000 bricks. Eventually, twenty-six brick companies lined the big bend in the river from northern New Cumberland to Kings Creek. Old river boat captains called this area of the river "The Brick Yard Bend". More industry was attracted to the community with the arrival of the first trains. In 1886 the first railroad was built in New Cumberland. At one time, as many as seventy-five loaded freight cars left town each day with items of manufacture: bricks, foundry products, sewer pipes, vitrified stone water pipes, furnace linings, flue linings, chimney tops, hot-air pipes, fine ground fire-clay, lawn and hanging vases, tiles of all descriptions, and other terra-cotta work. In 1876 "The Independent" printed the first local newspaper.

Thanks to the generosity of the late Dr. Charles Swaney, we enjoy our own public library which offers story hour and other children's programs plus tutoring in literacy and computers. The library is continued to be supported by levies. We were the first City in Hancock County to open a library known as the Swaney Memorial Library.

New Cumberland has a modern city park with playground equipment, tennis courts and basketball courts. There are sport programs available, including tennis, baseball and basketball.

Tomlinson Run State Park, just a few minutes north in New Manchester, features numerous family activities throughout the year and offers swimming, picnic areas, miniature golf, disc golf, fishing, paddleboats, and walking trails, plus a scenic campground with both modern and primitive sites.

Boating is very popular with local residents who take full advantage of the scenic Ohio River. Sections of riverfront property are leased out by the city administration for recreational purposes. Each September the New Cumberland Festival and Parade Committee sponsor a Fall River Fest. The Festival is held along River Avenue for all to enjoy the beautiful Ohio River.

New Cumberland takes pride in our community, we have won several awards for Keep New Cumberland Beautiful. With the funding of grants we have added two parks, one with a town clock and the other with a gazebo. We have also recently added a Community Garden.

The City is struggling with revenue challenges associated with a steady decline in gaming income, video lottery as well as loss of businesses in our City and surrounding areas. Additionally, the City faces major infrastructure needs to try and revitalize business development.

New Cumberland shares many common problems and opportunities with the surrounding areas some of which have been granted the home rule status such as Weirton and Wheeling.

With recent legislation to allow Class IV municipalities to apply for this status, New Cumberland is ready to take this next step which it believes will enable it to better govern the town given its unique demographics, geography, tourist-based economy, and desires of its residents. If home rule is granted, New Cumberland intends to work quickly to execute its plan, in the hopes of improving quality of life for all of New Cumberland residents and visitors.

This home rule application from the City of New Cumberland identifies the following home rule powers which it seeks in these central themes.

1. Authority to enact a municipal sales tax of 1%, with a reduction in municipal business & occupational tax. This authority would allow New Cumberland to place a tax of 1% on sales within the corporate boundaries. New Cumberland will simultaneously lower the rate of its business & occupational tax upon assessments, as well provide a complete B&O tax abatement for business that are retailers. Due to the declining gaming and lottery revenues, New Cumberland feels that taking this action is a prudent way to help ensure its long-term financial future, while still maintaining high quality services and placing as small an amount of tax burden on its residential population as possible.

Municipal Sales Tax with B&O Reductions

Authority to impose a sales tax of 1%, when coupled with reductions in B&O sales taxes for retail.

Specific Legal Barrier

§8-13C-4. Municipal sales and services taxes.

(b) Alternative municipal sales tax. - on and after the first day of July, 2017, notwithstanding subsection (a) of this section, and in addition thereto in the case of qualifying municipality, any municipality that does not impose, or cease to impose, the business and occupation or privilege tax authorized by section five, article thirteen of this chapter has the plenary power and authority to impose, by ordinance, an alternative municipal sales and service tax at a rate not to exceed one percent, subject to the provisions of this article: Provided, That:

(1) The tax does not apply to any purchase of tangible personal property, custom software or the results of taxable services in a transaction completed within the corporate limits of the municipality before the first day of July 2017, or before such later date specified in the ordinance of the municipality imposing the tax; and (2) the effective date of the tax, or of a change in the tax, shall be no earlier than the first day of the calendar quarter that at a minimum begins one hundred eighty days after notice of the tax, or of change in the rate of tax, is provided to the Tax Commissioner as provided in section six of this article.

Specific Problem Caused by Barrier

New Cumberland faces fiscal challenges resulting from economic recession, capital investment and infrastructure needs, declining lottery/table game revenues, rentals and other challenges that could only become more daunting if gaming revenues further decrease. These revenue shortfalls are exacerbated by New Cumberland's inability to utilize a sales tax unless the city eliminates its Business & Occupational taxes. New Cumberland cannot eliminate its B&O taxes in order to impose sales taxes, because the city would lose substantial revenue from certain entities that would not pay a sales tax, including construction and utility operations. Furthermore New Cumberland already maintains its B&O rates at the state maximum, so it has no independent way of raising revenue other than utilizing a sales tax/B&O reduction. Because of the city's small population and geographic size, it has no business at all in the production and manufacturing categories of the B&O tax.

Proposed Solution

This authority would allow for New Cumberland to generate needed revenue by utilizing a municipal sales and use tax of 1% while still maintaining some of its irreplaceable B&O tax revenue. New Cumberland would couple a 1% municipal sales and use tax with a .10% reduction of its B&O tax rates on retail. The city will undertake an annual review of these rates and proposals in order to see if more B&O rate reductions can be prudently enacted.

Fiscal & Economic Benefit of Proposed Solutions

New Cumberland expects a net fiscal benefit of approximately \$140,503.23 annually from this important home rule authority. This would enable the city to continue with infrastructure projects to make New Cumberland a more inviting place for business development and a welcoming community for new homeowners.

Fiscal Analysis

Illustration I - B&O Tax Rates (per \$100)

	Maximum Rate	NC Current Rate	NC Proposed Rate
Production of Coal	.01	.01	.01
Prod. of Sand/Gravel	.03	.03	.03
Prod. of Oil/Slag	.03	.03	.03
Prod. of Natural Gas	.06	.06	.06
Prod. Other Nat. Res.	.02	.02	.02
Manufacturing	.0030	.003	.003
Retailer	.0050	.0015	.0005
Wholesalers	.0015	.0010	.0010
Electric Power Co.	.04	.04	.04
Electric Power other	.03	.03	.03
Natural Gas Co.	.03	.03	.03
All Other Public Srvc.	.02	.02	.02
Contracting	.02	.02	.02
Amusement	.0050	.0025	.0025
Rent-Royalties Fee	.01	.0025	.0025
Banking	.01	.0025	.0025
Srvc. & all Others	.01	.0025	.0025

Note: Under the current proposal, all businesses in New Cumberland which have gross receipts of less than \$10,000.00 per annum will be exempt from paying any B&O taxes in any category.

The Total Retail Sales during FY2015: \$16,694,272.64.

The city is estimating that 0% of the Total Retail Sales are tax exempt per the WV Code on exemption of sales tax explained previously.

By reducing Retail Sales and eliminating B&O taxes collected on businesses that have gross sales of less than \$10,000.00 per annum, the City of New Cumberland estimates that it will reduce B&O taxes collected by \$1,398.09 per year. Conversely, the elimination of this tax will save both time and money for employees who presently must complete and mail B&O tax forms for these small businesses, and then receive and process data and for small amounts of funds.

Total sales tax generated	\$166,942.72
Less 5% tax commissioner admin. fee	\$ 8,347.13
Less B&O Elimination/reduction	\$ 18,092.36
Net available for new projects:	\$140,503.23

Decline in Lottery, Table Game, and Rental Revenue Received

Lottery Revenue Received by City of New Cumberland

Fiscal Year 2011: \$11,812.91
Fiscal Year 2012: \$15,790.59
Fiscal Year 2013: \$18,876.15
Fiscal Year 2014: \$15,434.80
Fiscal Year 2015: \$14,548.53

Table Gaming Revenue by City of New Cumberland

Fiscal Year 2011: \$96,531.86
Fiscal Year 2012: \$80,392.20
Fiscal Year 2013: \$25,118.50
Fiscal Year 2014: \$23,412.51
Fiscal Year 2015: \$21,458.09

Lottery Revenue received from Hancock County Commissioners

Fiscal Year 2012: \$114,000.00
Fiscal Year 2013: \$114,000.00
Fiscal Year 2014: \$114,000.00
Fiscal Year 2015: \$114,000.00
Fiscal Year 2016: \$72,550.23

Municipal Rental received by City of New Cumberland

Fiscal Year 2012: \$104,385.00
Fiscal Year 2013: \$104,385.00
Fiscal Year 2014: \$104,385.00
Fiscal Year 2015: \$104,385.00
Fiscal Year 2016: \$53,685.00

Administrative Matters

Collection Procedures

The municipal sales and use taxes would be administered, collected, and enforced by the Tax Commissioner, at the same time and in the same manner as the state consumer sales and service tax and use taxes are administered.

- 1) Large vendors remit tax monthly to Tax Commission by the 20th day of the month in which the taxes collected, except for taxes collected in December each year that are due at the end of January of next calendar year.
- 2) Very small vendors remit tax annually to the Tax Commission by the end of January following the calendar year in which tax was collected.
- 3) All other vendors remit tax to the Tax Commissioner on a quarterly basis by the end of the month following the close of the quarter.
- 4) Purchase use taxes are remitted at the same time as sales taxes are remitted to the Tax Commissioner.

Quarterly, the State Treasurer will remit to the municipality the amount of tax in the municipality's sub account established in the State Treasury pursuant to WV Code §8-13C-7.

The City of New Cumberland recognizes that when B&O taxes are reduced in order to impose a sales tax, the effective date of the B&O tax reduction and the date when the municipality will begin to receive sales tax collections need to be coordinated in order to avoid a budget shortfall.

The Tax Commissioner will likely charge an annual fee for collection services, which may not exceed 5% of net collections, and has based its estimates accordingly.

Boundary Database

A municipality imposing a sales tax will need to provide the Tax Commissioner with a rate and boundary database. To build the database, the municipality will need to know (1) location of its boundaries; (2) the five-digit ZIP codes located in whole or in part in the municipality; and (3) the nine-digit ZIP+4 Codes located in whole or in part in the municipality imposing the sales tax.

New Cumberland recognizes that imposing a sales tax it will need to provide the Tax Commissioner with a rate boundary database. To build the database, New Cumberland anticipates utilizing the five-digit ZIP Code located in whole with the municipality, and the nine-digit ZIP+4 Codes located in whole within the municipality imposing the sales tax. Consequently, once the rate and boundary database is built, it must be maintained by the municipality and the Tax Commissioner must be advised when the ZIP code boundaries are changed.

The City of New Cumberland has one five-digit ZIP code located in whole or in part within the city: 26047.

Vendor Compliance Learning Curve

State and municipal sales and use taxes are collected employing what are known as destination sourcing rules, which are set forth in WV Code §11-15B-14, §11-15B-14a, and §11-15B-15.

In general, if the customer takes delivery of the tangible personal property, custom software, or results of the taxable service at the business location of the vendor (i.e. the storefront), the state and local sales/use taxes applicable to that location apply.

When delivery does not occur at the vendor's business location, the state and local sales taxes applicable to the transactions are generally those applicable to the location where the purchaser takes delivery of the goods or results of the taxable service.

Applying the destination sourcing rules will likely be a new experience for many vendors currently selling goods and furnishing services within the City of New Cumberland. Our revenue projections take this learning curve into consideration.

Conclusion

As the discussion demonstrates, it is economically feasible for the City of New Cumberland to reduce and partially eliminate its B&O tax and to impose a 1% sales tax. The city believes that this is the most prudent and responsible step to take in order to raise the necessary revenue for the city. The City Council and administration have been diligent in their efforts to be good stewards for the residents of New Cumberland, and have gone to great lengths to maintain financial stability. Some of these efforts include:

- Revisiting our B&O Ordinance to include business that may not be on the current ordinance.
- Working diligently with the businesses for non-payment of B&O taxes.
- Purchased a school building in 2004 for our City Hall and use the rest of the building for rentals.

Affidavits & Attachments to Home Rule Application

- Attachment I - Sales Tax/ B&O Reduction Feasibility Study
- Attachment II - Publication for Public Hearing
- Attachment III - Publication Mandate Verification
- Attachment IV - City Council Agenda for Public Hearing
- Attachment V - Public Hearing Mandate Verification (Minutes of Council Meeting)
- Attachment VI - Ordinance Authorizing Submission of Plan
- Attachment VII - Attorney Opinion
- Attachment VIII - Treasurer's State of West Virginia Fees Statement
- Attachment IX - Statement Regarding WV Code §8-11-4

Municipal Sales Tax / B&O Feasibility Study										
WV Municipal Home Rule Pilot Program Application - Sales Tax Study - New Cumberland, WV										
	Gross Amount	Current rate	Proposed rate reduction	Tax Amount Paid	B&O Reduction	Projected B&O w/ Reduction	Total 1% Sales Tax Collection	Less 5% State Fee	Net Sales Tax Rev.	Combined B&O & 1% Sales Tax Rev.
Manufacturing	\$453,759.00	.003		\$1,361.21						\$1,361.21
Retail	\$16,694,272.64	.0015	.0005	\$25,041.41	\$16,694.27	\$8,347.13	\$166,942.72	\$8,347.13	\$158,595.59	\$166,942.72
Wholesale	\$5,072,637.37	.001		\$5,072.64						\$5,072.64
Electric sales	\$726,539.07	.04		\$29,061.56						\$29,061.56
Natural Gas	\$560,788.66	.03		\$16,823.66						\$16,823.66
Contracting	\$1,521,338.23	.02		\$30,426.76						\$30,426.76
Other	\$390,656.81	.02		\$7,813.14						\$7,813.14
Rents	\$71,030.00	.0025		\$177.57						\$177.57
Service	\$2,018,528.15	.0025		\$5,046.32						\$5,046.32
Banking	\$2,264,978.00	.0025		\$5,662.45						\$5,662.45
Gross Sales Less than \$10,000.00 Reduction					\$1,398.09					-\$1,398.09
Totals	\$29,774,527.93			\$126,486.72	\$18,092.36					\$266,989.94

Explanation of New Cumberland Sales Tax/B&O Reform Proposal

As part of the feasibility study for the proposed home rule authority of the City of New Cumberland, WV with respect to the establishment of a 1% sales tax and reduction of certain B&O taxes, New Cumberland provides the following background and information:

1. Reduction of Retail B&O Rates: As part of this home rule proposal, New Cumberland intends to further reduce the B&O rates for retail by .10% of the current rate of \$.15, to a new rate of \$.05 per \$100.00.
2. Elimination of Small Business B&O Taxes: New Cumberland will further reduce its B&O tax by eliminating the tax on all businesses that have less than \$10,000.00 gross sales per year.
3. Net result: Under the tax structure proposed in this application, New Cumberland expects to gain approximately \$140,503.22 in annual additional net tax revenues, taking into account the expected increase in revenues from sales tax, decrease in B&O taxes, and West Virginia State Tax Department administration fee. This amount will help address the significant shortfall in gaming/lottery revenue that is impacting the town's financial health.

Attachment II - Publication for Public Hearing

Notice of Public Hearing and Special/City Council Meetings.

Municipal Home Rule Pilot Program Plan/Application

Notice is hereby given by the City of New Cumberland, West Virginia that it will hold a public hearing on January 11, 2016 at 5:00 p.m. during a Special City Council meeting in the City Hall, council chambers 104 North Court Street, New Cumberland, WV.

The purpose of this public hearing is to discuss the City of New Cumberland proposed written plan for Home Rule. This information will be utilized by the City of New Cumberland in its application for acceptance into phase III of the West Virginia Municipal Home Rule Pilot Program, established by Chapter 8, Article 1, section 5a of the Code of West Virginia, 1931, as amended.

The City of New Cumberland Home Rule plan will be available for public inspection beginning December 11, 2015 in the municipal offices at New Cumberland City Hall, 104 N. Court Street, New Cumberland, West Virginia, during regularly posted business hours of 8:00a.m. to 4:00 p.m. The City of New Cumberland may choose to make the plan available for public inspection at other locations in addition to being available at City Hall.

Interested citizens are invited to attend the public hearing scheduled on Monday, January 11, 2016 at 5:00p.m., and to present oral or written comments concerning City of New Cumberland's proposed Home Rule plan. Written comments may be addressed to Office of the Mayor, City of New Cumberland, PO Box 505, New Cumberland, WV 26047.

The first reading of the ordinance approving the ordinance approving the City of New Cumberland's Home Rule plan and application will take place on January 4, 2016 at 5:00p.m. at City Hall, council chambers, 104 N. Court Street, New Cumberland, West Virginia.

The second reading of the ordinance approving the ordinance approving the City of New Cumberland's Home Rule plan and application will take place on January 11, 2016 5:00 p.m. immediately following the public hearing at City Hall, council chambers, 104 N. Court Street, New Cumberland, West Virginia.

Please run as a Class II legal ad for December 11th and December 18th.

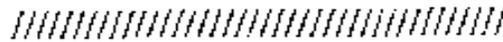
STATE OF WEST VIRGINIA
COUNTY OF HANCOCK

I, LISA VARGO, bookkeeper for the publisher of TIE WERTON DAILY TIMES a newspaper in the City of Weirton, State of West Virginia, hereby certify that the annexed publication was inserted in said newspaper on the following dates:

Dates 12-11-18, _____ 2015

Given under my hand this 18th day of December _____ 2015

Lisa Vargo



Sworn to and subscribed before me on this 18th day of December _____ 2015 of, in and for HANCOCK COUNTY, WEST VIRGINIA

AMOUNT: \$78.61
ACCT. # L00223
NOTARY:



PATRICIA J. SCHEEL
NOTARY PUBLIC
STATE OF OHIO
MY COMMISSION EXPIRES
MARCH 5, 2018

Patricia J. Scheel

Notice of Public Hearing and Special City Council Meeting
The Home Rule Pilot Program
The City of New Cumberland, West Virginia, hereby gives notice that a public hearing on the Home Rule Pilot Program will be held on Monday, January 11, 2018 at 5:00 p.m. at the City Council Meeting Room, 104 N. Court Street, New Cumberland, WV 26047.
The purpose of this public hearing is to discuss the City of New Cumberland proposed Home Rule Pilot Program. The program will be utilized by the City of New Cumberland in its application for reauthorization for the Home Rule Pilot Program established by Chapter 8, Article 1, Section 2 of the Code of West Virginia, 2011, as amended.
The City of New Cumberland Home Rule Pilot Program will be available for public inspection beginning December 11, 2015 in the municipal office at New Cumberland City Hall, 104 N. Court Street, New Cumberland, West Virginia, during regularly posted business hours of 9 a.m. to 4 p.m. The City of New Cumberland may choose to make the plan available for public inspection at other locations in addition to being available at City Hall.
Interested citizens are invited to attend the public hearing beginning on Monday, January 11, 2018 at 5:00 p.m. and to present any of their comments regarding the City of New Cumberland's proposed Home Rule Pilot Program. Comments may be addressed to either the Mayor, City of New Cumberland, PO Box 500, New Cumberland, WV 26047.
The first reading of the ordinance approving the ordinance approving the City of New Cumberland Home Rule Plan and application will be held on January 9, 2018 at 5:00 p.m. in City Hall, Council Chambers, 104 N. Court Street, New Cumberland, West Virginia.
The second reading of the ordinance approving the ordinance approving the City of New Cumberland Home Rule Plan and application will take place on January 11, 2018 at 5:00 p.m. immediately following the public hearing at City Hall Council Chambers, 104 N. Court Street, New Cumberland, West Virginia.
12-11-18, 2015

New Cumberland City Council Agenda

Public Hearing

Special Session of Council

January 11, 2016

Call to order

Roll Call

Old Business:

Agenda:

Public hearing on Home Rule Application Adoption (Ordinance 16-004)

Second reading on Home Rule Application Adoption (Ordinance 16-004)

Adjournment:

Attachment V - Public Hearing Mandate Verification (Minutes of Council Meeting)

Public Hearing
Special Session of Council
January 11, 2016

Mayor brought the Public Hearing and Special Session to order at 5:00p.m. Those present were Perkins, White, Vulgamore, Bartley, and Attorney Pearl. Webster and Marks were absent.

The purpose of this meeting was to hold a Public Hearing and Special Session to approve the second reading of Ordinance 16-004 Municipal Home Rule Pilot Program Plan. The Mayor asked the public if anyone had any questions, there were no questions or comments. The Mayor explained the program to the public. In 2007 WV Home Rule Board approved five Municipalities into the program. In 2013 the program has been extended and the number of Municipalities increased to twenty. WV Home Rule Board added fourteen more Municipalities, four of which had to be a Class IV Municipality and New Cumberland is a Class IV Municipality.

Our basis for applying to the WV Home Rule Pilot Program is that the city faces a decrease in revenue due to the gaming industry and a loss of tenants in our building. The Commissioners project less than two million in video lottery this year and they do not disburse money if they are below two million.

The Home Rule designation would allow New Cumberland to apply a 1% sales and use tax on transactions within the city. To meet the requirements of the program New Cumberland must make a reduction in the B&O tax that is now being levied.

These funds would enable the city to continue infrastructure projects to make New Cumberland a more inviting place for business development, a safer community for all and a welcoming community for new homeowners. If we are not accepted and cannot raise more revenue, we face a loss of services.

Mayor ask again if anyone had any objections to the city adopting WV Home Rule Pilot Program. Having no objections or comments the Mayor ask to proceed to the second reading of the home rule ordinance.

A motion was made by White to approve the second reading of Ordinance 16-004 Imposing Municipal Sales and Service tax and Municipal use tax in accordance with West Virginia Code §8-1-5a. A motion was made by Bartley to second the motion. Motion carried.

A motion was made by White to adjourn the meeting. A motion was made by Perkins to second the motion. Motion carried, meeting adjourned.

Ordinance 16-004

ORDINANCE IMPOSING MUNICIPAL SALES AND SERVICE TAX AND MUNICIPAL USE TAX IN ACCORDANCE WITH WEST VIRGINIA CODE §8-1-5a

Definitions:

For the purpose of application, interpretation, and construction of this Ordinance, the definitions as set forth in West Virginia Code Chapter 11, Articles 15, 15A and 15B, shall apply, and the definitions therein are fully incorporated herein by reference.

Imposition of a Municipal Sales and Service Tax:

In accordance with the authority as set forth in West Virginia Code §8-1-5a, effective on the first day of July, 2017, there is hereby imposed upon all persons or entities engaging in business within the municipal boundaries of the City of New Cumberland a Municipal Sales and Service Tax in an amount equal to one percent (1%) on all sales made and services rendered within the boundaries of the municipality of the City of New Cumberland, subject to the following:

- (1) The base of the Municipal Sales and Service Tax imposed herein shall be identical to the base of the Consumers Sales and Service Tax imposed pursuant to the provisions of West Virginia Code Chapter 11, Article 15; and,
- (2) Except for the exemption provided in West Virginia Code §11-15-9f, all exemptions and exceptions from Consumers Sales and Service Tax apply to this Municipal Sales and Service Tax; and
- (3) Sales of motor vehicles subject to the tax imposed under West Virginia Code §11-15-3c and sales of gasoline and special fuel are not subject to the Municipal Sales and Service Tax herein imposed; and,
- (4) The Municipal Sales and Service Tax herein imposed is subject to the sourcing rules set forth in West Virginia Code Chapter 11, Article 15B.

Imposition of a Municipal Use Tax:

In accordance with the authority set forth in West Virginia Code §8-1-5a, effective on and after the first day of July, 2017, a Municipal Use Tax is hereby levied and imposed on the use within the City of New Cumberland of tangible personal property, custom software, and taxable services, at the rate of one percent (1%) of the purchase price of such property or taxable services, subject to the following:

- (1) The base of the Municipal Use Tax herein imposed shall be identical to the base of the use tax imposed pursuant to West Virginia Code Chapter 11, Article 15A; and,
- (2) Except for the exemptions provided in West Virginia Code §11-15-9f, all exemptions and exceptions from the use tax imposed pursuant to West Virginia Code Chapter 11, Article 15A apply to the Municipal Use Tax herein imposed; and,

(3) Uses of motor vehicles subject to the tax imposed under West Virginia Code §11-15-3c and uses of gasoline and special fuel are not subject to the Municipal Use Tax herein imposed; and,

(4) The Municipal Use Tax herein imposed is subject to the sourcing rules set forth in West Virginia Code Chapter 11, Article 15B.

Credit Against Municipal Use Tax:

A person or entity is entitled to a credit against the Municipal Use Tax herein imposed on the use of a particular item of tangible personal property, custom software or services equal to the amount, if any, of sales tax lawfully paid to another municipality for the acquisition of the property or service; provided, the amount of credit allowed shall not exceed the amount of Municipal Use Tax imposed on the use of the property or service in the City of New Cumberland. For purposes of this Ordinance the following definitions shall apply:

(1) "Municipality" means a municipality, as defined in West Virginia Code §8-1-2, or a comparable unit or entity of local government in another State; and,

(2) "Sales Tax" includes a sales tax or compensating use tax lawfully imposed on the use of tangible personal property, custom software or a service by the municipality or county, as appropriate, in which the sale or use occurred; and,

(3) "State" includes the fifty (50) states of the United States and the District of Columbia, but does not include any of the several territories organized by Congress.

No credit is allowed under this Ordinance for payment of any sales or use taxes imposed by this State or any other State.

Tax Commissioner Shall Administer, Enforce and Collect Taxes:

The services of the West Virginia State Tax Commissioner shall be used to administer, enforce and collect the Municipal Sales and Service Tax and Municipal Use Tax herein imposed and the City shall coordinate such services with the West Virginia State Tax Department.

Municipal Taxes Imposed in Addition to Consumer Sales and Service Tax and Consumer Use Tax:

The Municipal Consumers Sales and Service Tax and Municipal Use Tax imposed pursuant to this Ordinance shall be in addition to the Consumers Sales and Service Tax and Use Tax imposed pursuant to West Virginia Code Chapter 11, Articles 15 and 15A, on sales made and services rendered and taxable uses of tangible personal property, custom software, and taxable services within the boundaries of the municipality of the City of New Cumberland and, except as exempted or excepted, all sales made and services rendered and taxable uses of tangible personal property, custom software, and taxable services within the boundaries of the municipality of the City of New Cumberland shall remain subject to the tax levied by those Articles. Further, the Municipal Sales and Service Tax and Municipal Use Tax imposed pursuant to this Ordinance shall be imposed in addition to any tax imposed pursuant to the provisions of West Virginia Code §7-22-1, §8-13-6, §8-13-7, and §8-38-12, respectively.

The effective date of the Ordinance shall be the first day of the calendar quarter that begins one hundred and eighty days after passage of the Ordinance and notice has been provided to the Tax Commissioner, which would be July 1, 2017.

A motion to accept this ordinance was made by councilman: William White

Motion seconded by councilman: Keith Bartley Passed Council: 4 to 0.

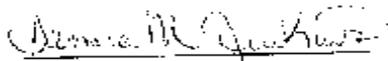
First reading: January 4, 2016

Second reading: January 11, 2016

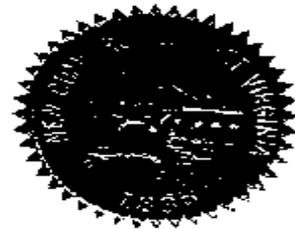
Adopted by the City of New Cumberland, West Virginia this 11th day of January, 2016.



Linda L. McNeil, Mayor



Tamera M. Jenkins, City Clerk



Attachment VII - Attorney's Opinion

FRANKOVITCH, ANETAKIS, COLANTONIO & SIMON
ATTORNEYS AT LAW

GEORGE J. ANETAKIS *
CARL N. FRANKOVITCH **
M. ERIC FRANKOVITCH ***
MARK A. COLANTONIO ***
MICHAEL G. SIMON **
THOMAS J. DECAPIO *
KEVIN M. PEARL ***
CARLA. FRANKOVITCH ***

OF COUNSEL
WILLIAM R. KIEFER *

ADMITTED TO PRACTICE IN
* WEST VIRGINIA
† PENNSYLVANIA
‡ OHIO

337 PENCO ROAD
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TELEPHONE: 304-723-4400
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(304) 387-4400

UNITED BANK BUILDING
21 TWELFTH STREET, 6TH FLOOR
WHEELING, WV 26003

E-Mail Address: Kevin@facslaw.com

December 11, 2015

Honorable Linda L. McNeil
Mayor, of New Cumberland
P. O. Box 505
New Cumberland, WV 26047

Re: Compliance Home Rule Application

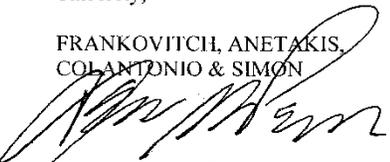
Dear Mayor McNeil:

Please allow this correspondence to respond to the City's request that I review the application for Home Rule pursuant to W. Va. Code § 8-1-5(a) et seq., and to provide a legal opinion of the application's compliance with the applicable provisions of West Virginia Law.

Based upon my review of the application provided to me, it is my legal opinion that the application complies with the statutory requirements set forth in W.Va. Code § 8-1-5 governing the request for Municipal Home Rule Pilot Program.

Sincerely,

FRANKOVITCH, ANETAKIS,
COLANTONIO & SIMON



KEVIN M. PEARL

KMP/kmp

Attachment VIII - Treasurer's State of West Virginia Fees Statement



P.O. Box 505 • New Cumberland, West Virginia 26047 • (304) 564-3383 • FAX (304) 564-3777

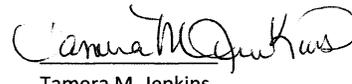
December 9, 2015

To the Members of the Home Rule Board,

This letter certifies that the City of New Cumberland owes no outstanding fees to the State of West Virginia.

Sincerely,


Linda L. McNeil,
Mayor


Tamera M. Jenkins,
City Clerk



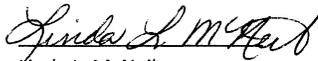
P.O. Box 505 • New Cumberland, West Virginia 26047 • (304) 564-3383 • FAX (304) 564-3777

December 9, 2015

To the Members of the Home Rule Board,

This is to certify that the requirements of Chapter 8, Article 11, Section 4 of the Code of West Virginia, 1931, as amended, concerning ordinances pertaining to the raising of revenue for the municipality are not applicable to the Home Rule Pilot Program, it will fully comply with the provisions of the aforementioned code section as well as any applicable rules and regulations.

Sincerely,


Linda L. McNeil
Mayor